IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

OP.No. 5851 of 2003(V)

PETITIONER:
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1. BASHEER AHAMMED S/O.MOHAMMED ALI,
AGED 38 YEARS, OMEGA HOUSE, SIMITERY ROAD,
PALARIVATTOM.

2. JOHN J.KATIKARAN S/O. JOSEPH, VYLOPPILLY
LANE, AZAD ROAD, KALOOR, ERNAKULAM DISTRICT

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
SMT.MERLIN MATHEW

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF
REVENUE, SECRETARIAT, TRIVANDRUM

2. THE DISTRICT COLLECTOR, ERNAKULAM

3. THE DEPUTY THAHSILDAR, REVENUE RECOVERY,
KANAYANOOR TALUK, ERNAKULAM

4. CANARA BANK, AYYAPPANKAVU BRANCH,
ERNAKULAM REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.V.B.HARI NARAYANAN
ADV.SMT.SMITHA, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 5851/2003

ORDER ON CMP NO. 10221/2003 IN O.P.No. 5851/2003

DISMISSED.

23/03/2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER ON I.A.No.10236/2003 IN O.P.No. 5851/2003

DISMISSED.

23/03/2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PLAINT IN O.S.NO. 51/2002 OF THE MUNSIFF'S COURT, ERNAKULAM FILED AGAINST THE PETITIONER DATED 07/01/2002.

P1(a) : COPY OF THE PLAINT IN O.S.NO. 52/2002 OF THE MUNSIFF'S COURT, ERNAKULAM FILED AGAINST THE PETITIONER DATED 07/01/2002.

P1(b) : COPY OF THE PLAINT IN O.S.NO.120/2002 OF THE MUNSIFF'S COURT, ERNAKULAM FILED AGAINST THE PETITIONER DATED 15/01/2002.

P1(c) : COPY OF THE PLAINT IN O.S.NO.122/2002 OF THE MUNSIFF'S COURT, ERNAKULAM FILED AGAINST THE PETITIONER DATED 15/01/2002.

P2 : COPY OF THE WRITTEN STATEMENT IN O.S.No. 51/02 FILED BY THE 1ST PETITIONER DATED 24/01/2003.

P2(a) : COPY OF THE WRITTEN STATEMENT IN O.S.No. 52/2002 FILED BY THE 1ST PETITIONER DATED 24/01/2003.

P3 : COPY OF THE DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT IN FORM NO. 1 OF THE K.R.R ACT TO THE 1ST PETITIONER DATED 04/02/2003.

P4 : COPY OF THE DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT IN FORM NO. 1 OF THE K.R.R.ACT TO THE 2ND PETITIONER DATED 31/01/2003.

P5 : COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN CMP NO. 9458/2003 IN O.P.No. 5358/2003 DATED 14/02/2003.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 5851 of 2003 V

Dated, this the 23rd day of March, 2007

J U D G M E N T

Petitioners are challenging recovery proceedings on the ground that petitioners have not borrowed any amount from the 4th respondent Bank and the debt due from them is the creation by the Bank Manager in collusion with the supplier of goods. However, learned counsel for the 4th respondent submitted that even though the suit was dismissed in the case of 1st petitioner, appeal filed by the Bank was allowed decreeing the disputed amount against him. In so far as 2nd petitioner is concerned, appeal is said to be pending before the appellate court. The amount due to the Bank can be recovered by virtue of notification under Sec. 71 of the RR Act. Since the appeal is allowed in favour of the Bank in the case of 1st petitioner, OP is dismissed leaving freedom to the Bank to proceed for recovery against 1st petitioner. However, if 1st petitioner gets any relief in 2nd appeal or in further proceedings, the Bank is bound to repay the recovered amount. In so far as, the 2nd petitioner is

concerned, there will be a stay against recovery proceedings for four months from now with a direction to the appellate court to dispose of the appeal after hearing the parties within three months from now, and thereafter recovery against 2nd petitioner will be based on orders in appeal by the Civil Court. If there is settlement between the supplier and the Bank then it is for the bank to recall the revenue recovery proceedings.

This OP is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg